



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10742249

Date: OCT. 16, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an interactive multimedia producer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established his receipt of a major, internationally recognized award or satisfaction of at least three of the initial evidentiary criteria.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition

of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner indicated employment as the founder and chief executive officer for [REDACTED] [REDACTED] in [REDACTED] Illinois. The Director determined that the Petitioner did not establish that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), and that he did not satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director concluded that the Petitioner fulfilled only two of the initial evidentiary criteria, memberships at 8 C.F.R. § 204.5(h)(3)(ii) and judging at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner argues that he received a one-time achievement and, in the alternative, meets an additional criterion, awards at 8 C.F.R. § 204.5(h)(3)(i).¹ After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that he garnered a major, internationally recognized award or satisfies the requirements of at least three criteria. Moreover, although we agree with the Director that the Petitioner complied with the judging criterion, we do not concur with the Director's decision regarding the membership criterion, discussed later.

A. One-Time Achievement

At the outset, the record contains sufficient documentation establishing his receipt of a 2018 [REDACTED] Award in the category of '[REDACTED]' for [REDACTED] [REDACTED] that includes a photograph of a trophy reflecting the Petitioner as a named recipient. However, the Petitioner did not demonstrate that a [REDACTED] Award qualifies as a major, internationally recognized award for the reasons discussed below.

The Petitioner submitted a letter from [REDACTED] co-founder and CEO of [REDACTED] (parent company to the [REDACTED] Awards), who stated:

¹ Issues or claims that are not raised on appeal are deemed to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court determined the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

The [redacted] Awards honor the talented agencies, brands, industry and creative leaders the very best and most innovative work on [redacted] channels, campaigns, [redacted] and [redacted]. A [redacted] Award is considered the most internationally prestigious award for excellence in [redacted] [redacted] accurately called the [redacted] Awards the '[redacted]'

Further, the Petitioner presented additional letters from [redacted] who proclaimed that the [redacted] Awards are considered *the most internationally prestigious award for excellence in [redacted] [redacted] often referred to as the [redacted]*”² (emphasis in original). Moreover, he offered letters from other individuals who opined that “[t]he most prestigious award in the world recognizing the best and most innovative work on [redacted] a platforms is The [redacted] Awards,”³ “[w]hen it comes to recognizing the interactive [redacted] content in [redacted], there is currently no awards organization more prestigious than The [redacted] Awards, which are known as the [redacted] of [redacted]”⁴ “[t]he [redacted] Award is the world’s most prestigious award for excellence in [redacted] [redacted] content, akin to the [redacted] for the [redacted] space,”⁵ and “[a] [redacted] Award is like receiving an Oscar or a Grammy and the international recognition it confers is invaluable for the award recipient’s career.”⁶

In addition, the Petitioner provided screenshots of a 2010 article entitled, [redacted] [redacted] from [redacted] reflecting the establishment of the awards in 2008 to honor users of [redacted] and then later expanded to other [redacted] platforms. The record also contains several website articles covering the awards ceremony and referencing the [redacted] Awards as the [redacted]. However, the Petitioner submitted articles that contradict or question the stature or recognition of the [redacted] Awards. Specifically, the Petitioner presented a blog from nytimes.com indicating that “[redacted] [redacted] Further, in a 2016 article from blastingnews.com, [redacted] stated that [redacted] [redacted] signifying that the creator of the awards does not believe that the [redacted] Awards have reached a level of prestige or prominence as the [redacted] as claimed by others. Moreover, the Petitioner offered screenshots from a partial article entitled, ‘[redacted]’ from balancecareers.com that ranked the [redacted] Awards as seventh, which is not representative of a major, internationally recognized award.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “[s]uch evidence shall include evidence of a one-time achievement (that is, a major internal[ly] recognized award).” Further, the House Report specifically cited to the Nobel Prize as an example of a one-time achievement.⁷ See H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Moreover,

² See letters from [redacted] marketing and partnerships manager, and [redacted] marketing and partnerships senior director and senior producer.

³ See letter from [redacted] executive producer for [redacted].

⁴ See letter from [redacted] CEO for [redacted].

⁵ See letter from [redacted] senior content marketing strategist for [redacted].

⁶ See letter from [redacted] director of digital marketing for [redacted].

⁷ Although in the O-1 nonimmigrant extraordinary ability context, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(A) provides an example of the Nobel Prize as an example of a major, internationally recognized award.

we have consistently recognized other examples of a one-time achievement include the Pulitzer Prize, an Academy Award, and an Olympic Medal. Further, we must look to Congress' intent that "admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor." *Id.* Thus, consistent with legislative history, a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards.

In addition, the selection of Nobel Laureates, the example provided by Congress indicated above, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized, not just acknowledged within the field as its highest award.

Although the letters and media articles presented by the Petitioner opine or refer to the [redacted] Awards as the [redacted] neither the letters nor the articles explain, justify, or demonstrate how the [redacted] Awards enjoy a similar level of recognition or status as the Academy Awards, to be considered a one-time achievement or major, internationally recognized award. In fact, as mentioned above, some the articles indicate lesser recognition or standing, as evidenced by [redacted]'s quote in the *blastingnews.com* article. Here, the Petitioner did not establish that receipt of a [redacted] Award qualifies as a one-time achievement, nor are we persuaded that the top award in each and every field qualifies as a one-time achievement. Moreover, the Petitioner did not establish that the [redacted] Awards are familiar with the public at large, such as Olympic Medals, Nobel Prizes, Pulitzer Prizes, and Academy Awards. Furthermore, the fact that a major, internationally recognized award, such as an Olympic Medal, may not exist in a particular field does not mean that we should diminish the impressive nature of the one-time achievement and accept a lesser one as a major, internationally recognized award. In cases where an alien cannot obtain a one-time achievement, including instances where it is not available in a field, "[a]n alien can also qualify on the basis of a career of acclaimed work in the field" by satisfying three of the ten categories of evidence. *See* H.R. Rep. at 59 and 8 C.F.R. § 204.5(h)(3). Moreover, awards that may be internationally recognized in the field do not necessarily demonstrate that they are also major or consistent with one-time achievements. In those instances, the regulation at 8 C.F.R. § 204.5(h)(3)(i) allows for an alien to submit lesser internationally recognized awards for excellence in the field.

In the case here, the Petitioner did not demonstrate that the [redacted] Awards enjoy broad, significant, and international recognition and receives a similar level of attention or popularity by the general public comparable to other major, globally recognized awards such as Nobel Prizes, Olympic Medals, and Oscars. Although the Petitioner did not show that his [redacted] Award qualifies as a one-time achievement at 8 C.F.R. § 204.5(h)(3), he did demonstrate that it meets the requirements for a lesser nationally or internationally recognized award for excellence in the field at 8 C.F.R. § 204.5(h)(3)(i).

B. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

As discussed above, the Petitioner established that his [] Award satisfies this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Director found that the Petitioner fulfilled this criterion without identifying the qualifying memberships and explaining his determination. In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.⁸ Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), we will withdraw the decision of the Director for this criterion.

The record reflects that the Petitioner claimed eligibility for this criterion at the time of filing based on memberships with: 1) Real Time Academy of Short Form and Sciences (RTASFS), 2) Telly Awards Judging Council (TAJC), 3) the International Academy of Digital Arts and Sciences (IADAS), and 4) the Academy of Interactive and Visual Arts (AIVA). For each one, the Petitioner submitted similar letters mirroring the regulatory language of 8 C.F.R. § 204.5(h)(3)(ii):

- Membership in [RTASFS] is by invitation only. In order to be considered for membership in [RTASFS], members must demonstrate outstanding professional achievements and recognition as industry leaders as determined by the [] Awards' executive board.⁹
- In order to be considered for membership in [TAJC], members must demonstrate outstanding professional achievements and recognition as industry leaders.¹⁰
- Membership to the IADAS is by invite only. In order to be considered for membership in the IADAS, members must demonstrate outstanding professional achievements and must be verified as experts and leaders in their peer group as determined by experience and expertise in their field.¹¹
- Membership to AIVA is by invitation only and based on a nomination by a founding or current member of the Academy plus demonstrated outstanding achievement in the field and recognition as an industry leader. Our Membership Committee, comprised of an international

⁸ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

⁹ See letter (July 12, 2019) from []

¹⁰ See letter from [] for TAJC.

¹¹ See letter from [] for IADAS.

panel of experts, reviews all nominations and/or applications to membership before extending an invitation to join the AIVA.¹²

Although the letters repeat the regulatory language, they do not point to any governing authority establishing that membership with any of the associations require outstanding achievements, as judged by recognized national or international experts. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.) (repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof). Further, as it relates to RTASFS and TAJC, the Petitioner did not submit any supporting evidence relating to the membership requirements, such as the bylaws or other official membership documentation, to corroborate the letters' assertions. Instead, the Petitioner provided evidence relating to awards and competitions from the associations.

Regarding IADAS, the Petitioner provided a screenshot from the association's website indicating that "[m]embership to [IADAS] is invite-only," and "[i]f you would like to request an invite or be considered for future involvement, please use the form by clicking on the link below." However, the Petitioner did not demonstrate that the screenshot reflects the membership requirements for IADAS, nor did he show that requesting an invite by filling out a form establishes the requirement of outstanding achievements, as judged by recognized national or international experts.

Similarly, as it relates to AIVA, the record contains a screenshot from the association's website indicating that "[m]embership in the AIVA will be opened to qualified individuals to further the mission of the AIVA," and members will be invited to join based on: 1) nomination by a founding member and approved by the membership committee, 2) nomination by another member and approved by the membership committee, 3) nomination by the AIVA as a result of being part of a winning entry in an affiliated award or recognition program sanctioned by the AIVA, or 4) applying directly through the website to provide credentials and industry related experience for review and approval by the membership committee. Here, the Petitioner did not establish that nomination by AIVA members or directly applying shows that outstanding achievements are an essential condition for membership, and that the membership committee is comprised of recognized national or international experts.

For the reasons discussed above, the Petitioner did not demonstrate his membership in associations that require outstanding achievements, as judged by recognized national or international experts in their disciplines or fields. Accordingly, we withdraw the decision of the Director for this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

¹² See letter from [redacted] to [redacted] for AIVA.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner documented his experience and work in the immersive reality field, the record does not contain sufficient evidence establishing that he is among the upper echelon on his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.